

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Helen Terndrup	Team: Team # 7	CCRB Case #: 200808313	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input checked="" type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Friday, 06/06/2008 1:24 AM	Location of Incident: West 23rd Street and Seventh Avenue	18 Mo. SOL 12/6/2009	Precinct: 10
Date/Time CV Reported Wed, 06/11/2008 3:09 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/11/2008 3:09 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Dandrea	06187	940045	010 PCT
2. CPT Theodore Lauterborn	00000	897840	010 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Cathy Martinez	09529	940432	010 PCT
2. CPT Frank Valluzzi	00000	905212	PBMS
3. POM Michael Riso	02738	931925	010 PCT
4. POM Richard Lawrence	20621	904336	010 PCT
5. SGT Donald Houvener	03156	915917	010 PCT
6. SGT William Coyle	01220	918895	010 PCT
7. POM James Kelly	19008	931757	010 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Robert Dandrea	Force: At West 23rd Street and Seventh Avenue in Manhattan, PO Robert Dandrea used physical force against § 87(2)(b) .	A . § 87(2)(g)
B . POM Robert Dandrea	Off. Language: At West 23rd Street and Seventh Avenue in Manhattan, PO Robert Dandrea made remarks to § 87(2)(b) based upon race.	B . § 87(2)(g)
C . CPT Theodore Lauterborn	Force: Inside the 10th Precinct stationhouse in Manhattan, Lt. Theodore Lauterborn used physical force against § 87(2)(b)	C . § 87(2)(g)

Synopsis

§ 87(2)(b) called IAB to file this complaint at approximately 3:30 a.m. on June 6, 2008. § 87(2)(b) also called the CCRB at 3:09 p.m. on June 11, 2008, to file his complaint. When the CCRB received the referral of the complaint § 87(2)(b) filed with IAB on June 12, 2008, it was identified as a duplicate of the complaint that § 87(2)(b) had filed directly with the CCRB.

At approximately 1:20 a.m. on June 6, 2008, § 87(2)(b) was walking with his friend § 87(2)(b) near Seventh Avenue and West 23rd Street in Manhattan. A man (identified by the investigation as § 87(2)(b)) approached them and accused § 87(2)(b) of stealing his wallet. § 87(2)(b) and § 87(2)(b) denied that § 87(2)(b) had taken his wallet and began to argue with § 87(2)(b). The dispute became a physical altercation when § 87(2)(b) grabbed § 87(2)(b) and pushed him against the gate over a store-front.

Several officers in uniform arrived at the scene, including PO Cathy Martinez and PO Robert Dandrea of the 10th Precinct. PO Dandrea handcuffed § 87(2)(b). As § 87(2)(b) was standing in handcuffs, PO Dandrea allegedly kicked § 87(2)(b)'s feet out from under him, causing him to fall to the ground [Allegation A]. § 87(2)(b) said, "Damn, nigga." PO Dandrea allegedly replied, "I'm not a nigger, you nigger" [Allegation B]. § 87(2)(b) was transported to the 10th Precinct stationhouse, where he waited in the holding cell for three to four hours before he was released. His arrest was voided after § 87(2)(b) changed his story during a further interview at the 10th Precinct stationhouse and stated that § 87(2)(b) did not take his wallet. As he was walking out of the stationhouse, § 87(2)(b) told Lt. Theodore Lauterborn that the situation was "bullshit" and that he felt that his arrest had been racially motivated. Lt. Lauterborn physically pushed § 87(2)(b) through a set of doors by shoving his hands into § 87(2)(b)'s chest a few times [Allegation C].

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old black male with brown eyes and black hair. He is 5'10" tall and weighs approximately 205 pounds. § 87(2)(b) resides at § 87(2)(b) in Manhattan. On June 6, 2008, at approximately 3:30 a.m., § 87(2)(b) called 911 and was connected to the IAB command center [encl. 4a-d]. § 87(2)(b) stated that he wanted to file a complaint about several officers from the 10th Precinct who had stopped him on the street, assaulted him, and detained him for no reason. § 87(2)(b) stated he was thrown on the ground several times by several officers and handcuffed. He stated that he was standing in front of the 10th Precinct stationhouse and was pushed off the steps by an officer telling him to get away from the stationhouse as he was trying to obtain the names and shield numbers of the officers. § 87(2)(b) stated that his feet were kicked out from under him. He declined an ambulance.

§ 87(2)(b) filed a notice of claim on § 87(2)(b) [encl. 6a]. In his notice of claim, § 87(2)(b) stated that he was assaulted and unlawfully arrested by NYPD officers. The officers used excessive physical force and "racially motivated and degrading slurs" against § 87(2)(b) and he received injuries to his neck, wrists, and back. On June 27, 2008, § 87(2)(b) was interviewed at the CCRB [encl. 7a-e].

At approximately 1:20 a.m. on June 6, 2008, § 87(2)(b) was walking with his friend § 87(2)(b) near Eighth Avenue and West 20th Street in Manhattan. § 87(2)(b) was wearing jeans and a white t-shirt. The two men had been walking around the neighborhood for twenty minutes and had not spoken to anyone else in that time. A man (identified by the investigation as § 87(2)(b)) approached them and accused § 87(2)(b) of stealing his wallet. § 87(2)(b) believed that this man's name was § 87(2)(b), based on information he overheard at the stationhouse later that evening.

§ 87(2)(b) thought that § 87(2)(b) appeared to be drunk. Although § 87(2)(b) and § 87(2)(b) repeatedly denied taking his wallet, § 87(2)(b) continually stated, "Give me back my wallet." § 87(2)(b) and § 87(2)(b) attempted to walk away, but § 87(2)(b) followed them, grabbed § 87(2)(b) and pushed him against the gate over a store-front. When § 87(2)(b) attempted to step between them, § 87(2)(b) put his hands around § 87(2)(b)'s neck and pushed him against the store-front as well. This struggle lasted about ten minutes before § 87(2)(b) and § 87(2)(b) attempted again to walk away. § 87(2)(b) followed them for approximately three

blocks, and § 87(2)(b) put an arm out to try to block § 87(2)(b) from holding on to them. When § 87(2)(b) and § 87(2)(b) reached the intersection of Seventh Avenue and West 23rd Street, approximately three marked patrol cars arrived. An officer identified by the investigation as PO Robert Dandrea approached § 87(2)(b) put his hands against § 87(2)(b)'s chest, and pushed him against the wall, before any officers had made any statements to § 87(2)(b). § 87(2)(b) stated that he did not step away or make any movements at this time, but he was angry and told the officers, "This is bullshit." PO Dandrea handcuffed § 87(2)(b). In his call to IAB, § 87(2)(b) stated he was thrown on the ground several times by several officers before he was handcuffed, but he did not make this allegation in his CCRB interview.

As § 87(2)(b) had was standing facing PO Dandrea with his back to the wall, PO Dandrea kicked his feet out from under him, causing him to fall to the ground without having his arms free to protect himself from the fall. § 87(2)(b) had been in handcuffs for only about one minute before PO Dandrea kicked his feet out from under him. § 87(2)(b) landed on his tailbone and said, "Damn, nigga." PO Dandrea replied, "I'm not a nigger, you nigger." § 87(2)(b) estimated that he was about eight feet away from § 87(2)(b) when PO Dandrea used the racial slur and he was not sure if § 87(2)(b) overheard this. An officer identified by the investigation as PO Martinez was standing nearby, and § 87(2)(b) believed that she may have heard PO Dandrea use the racial slur.

The officers had § 87(2)(b) and § 87(2)(b) sit on the ground in handcuffs. § 87(2)(b) stated that he did not see which officers approached § 87(2)(b) or witness his friend being handcuffed. More officers arrived, but § 87(2)(b) did not know how many officers were eventually at the scene.

§ 87(2)(b) and § 87(2)(b) remained on the street in handcuffs for about thirty minutes before they were taken to the 10th Precinct stationhouse. § 87(2)(b) was driven to the stationhouse by PO Martinez and PO Dandrea. § 87(2)(b) made no statements to the officers in the vehicle, but when he arrived at the stationhouse, after he was placed in the holding cell, he told the officers that they had injured his back, saying, "Yo, you fucked up my back." § 87(2)(b) waited in the holding cell for over an hour before the officers told him that he could leave. § 87(2)(b) asked Lt. Theodore Lauterborn (whose name he obtained from reading it on the shield) for the names and shield numbers of the officers involved in his arrest, and he was given the name of PO Martinez (his arresting officer). § 87(2)(b) asked Lt. Lauterborn for the other names and shield numbers of the officers, but Lt. Lauterborn did not provide them. § 87(2)(b) told Lt. Lauterborn that the situation was "bullshit." Lt. Lauterborn then physically pushed § 87(2)(b) a few times by putting his hands against § 87(2)(b)'s chest. Lt. Lauterborn pushed § 87(2)(b) through the first set of doors leaving the stationhouse, and § 87(2)(b) exited the second set of doors. § 87(2)(b) stated that he did not know what happened to § 87(2)(b).

Results of Investigation

Attempts to Contact § 87(2)(b)

§ 87(2)(b) stated that § 87(2)(b) is a casual acquaintance of his, and he does not have any contact information for him. The BADS index for the arrests made within the confines of the 10th Precinct on June 6, 2008, was obtained, but the index showed no arrest for § 87(2)(b) (although § 87(2)(b)'s arrest was listed). The prisoner holding pen roster and command log showed that § 87(2)(b) was entered as an arrest in connection with this incident, and that he was taken to Manhattan Central Booking later that day. The command log entry provided § 87(2)(b)'s address, and two please-call letters were mailed to him on October 16, 2008, and October 21, 2008. The letters were not returned to the CCRB. A Lexis-Nexis search and a Whitepages.com search were conducted in an attempt to contact § 87(2)(b) but the searches had negative results.

§ 87(2)(b)

§ 87(2)(g)

PO Cathy Martinez, 10th Precinct

PO Cathy Martinez is a § 87(2)(b) -old Hispanic female who has brown hair and green eyes. She is 5'5" tall and weighs 140 pounds. PO Martinez provided her memo book entries for this incident, which stated that at 1:00 a.m., she received a radio run for a robbery in progress [encl. 8a-c]. At 1:24 a.m., one black male and one Hispanic male were placed under arrest at West 23rd Street and Eighth Avenue. A witness stated that he saw these two males rob a victim. Capt. Valuzzi was at the scene. At 2:24 a.m., the black male was released, as the complainant/victim stated that he did not see this man take his property.

§ 87(2)(b), § 87(2)(a) 160.50

PO Martinez noted that all three people involved had no visible injuries, and all three appeared to be intoxicated.

PO Martinez also prepared the OLBS and BADS arrest reports for § 87(2)(b) [encl. 10a-b and 11a]. The narrative states that § 87(2)(b) was arrested for § 87(2)(b). Upon further investigation, it was determined that § 87(2)(b) could not be identified as being part of the robbery. § 87(2)(b) did not receive any injuries. He was released upon the authority of Lt. Lauterborn at 2:45 a.m. On October 25, 2008, PO Martinez was interviewed at the CCRB [encl. 12a-b].

On June 6, 2008, PO Martinez worked a 2315 x 0750 tour. She was assigned to patrol sector B with PO Dandrea. The officers were operating a marked patrol car with RMP #2154 and were dressed in uniform. PO Martinez stated that she and PO Dandrea were on patrol when they received a radio run for a robbery in progress at West 23rd Street and Eighth Avenue. The physical descriptions provided for the perpetrators (to PO Martinez's recollection) were of a black male with a red shirt and a Hispanic male in a green shirt. PO Martinez and PO Dandrea responded to the scene, and PO Martinez spoke with a witness outside the pornography store, which is located near the corner of West 23rd Street and Seventh Avenue. The witness (whose name PO Martinez did not obtain) pointed at three men halfway down the block on West 23rd Street between Seventh and Eighth Avenues and stated that they had been fighting and they believed that two of the men had robbed the third of his wallet. PO Martinez stated that the three men were not standing together, and that two of the men were together as the other was further away. Another patrol car arrived at this time, but PO Martinez did not recall the officers in that patrol car.

The two men indicated by the witness—§ 87(2)(b) and § 87(2)(b)—fit the physical description that had been put over the radio, and the officers approached and stopped them. PO Martinez stated that she was not sure specifically which officers stopped § 87(2)(b) and § 87(2)(b). She did not recall which other police officers were at the scene nor how many were there. § 87(2)(b) and § 87(2)(b) were handcuffed as PO Martinez was there, but she did not recall who handcuffed them. She stated that she believed the two men were asked to sit down against the wall, and they complied. She never saw § 87(2)(b) fall to the ground or saw an officer kick his legs out from beneath him. She stated that § 87(2)(b) and § 87(2)(b) denied that they had robbed anyone. They were searched, but no wallet was found. § 87(2)(b) was agitated and screaming, but PO Martinez did not recall what he was screaming. She did not hear any officer call § 87(2)(b) a "nigger." She estimated that she was at the scene for about five minutes before § 87(2)(b) and § 87(2)(b) were transported to the stationhouse.

PO Martinez and PO Dandrea transported § 87(2)(b). At the stationhouse, § 87(2)(b) told PO Martinez that § 87(2)(b) had pushed him but then changed his story to say that § 87(2)(b) had not pushed him. The officers decided to release § 87(2)(b) but § 87(2)(b) would not leave the stationhouse and was screaming that he would sue the officers. § 87(2)(b) was asked to leave several times, and after he refused to do so, Lt. Lauterborn took hold of his arm and walked him outside of the stationhouse. § 87(2)(b) was attempting to pull away from the lieutenant and continued to scream. Several officers, including PO Martinez, walked out behind the lieutenant, and eventually § 87(2)(b) left. Lt. Lauterborn did not push § 87(2)(b) outside or have any other physical contact with § 87(2)(b) aside from taking hold of his arm.

PO Martinez stated that when she watched the video surveillance for The Blue the following day, she observed § 87(2)(b) walk in and then walk right out of the store. The tape showed that both § 87(2)(b) and § 87(2)(b) had left the store before § 87(2)(b) walked in, so she did not believe

that § 87(2)(b) wallet had been stolen inside the store, as he had initially claimed. PO Martinez believed that § 87(2)(b) and § 87(2)(b) had gotten into an argument outside the store and had been shoving each other, which was what the witness had observed.

PO Robert Dandrea, 10th Precinct

PO Robert Dandrea is a § 87(2)(b)-old white male who has brown hair and hazel eyes. He is 5'11" tall and weighs 185 pounds. PO Dandrea provided his memo book entries, which record that at 1:03 a.m., they received a report of an assault at West 23rd Street and Eighth Avenue [encl. 13a-b]. At 1:24 a.m., two males were arrested at West 23rd Street and Eighth Avenue. At 1:25 a.m., PO Dandrea transported one male to the stationhouse. On January 9, 2009, PO Dandrea was interviewed at the CCRB [encl. 14a-c]

On June 6, 2008, PO Dandrea was working a 2315 x 0750 tour. He was dressed in uniform and assigned to patrol sector B with PO Martinez in a marked patrol car with RMP #2154. At approximately 1:03 a.m., PO Dandrea and PO Martinez received a radio run for a robbery at Eighth Avenue and West 23rd Street. PO Dandrea did not recall if the information he received over the radio contained a physical description of the perpetrators. PO Martinez and PO Dandrea were the first officers to arrive at the scene. When they arrived, several bystanders approached the officers and pointed out two perpetrators, who were walking towards Seventh Avenue along West 23rd Street between Seventh and Eighth Avenues. The bystanders said that they had witnessed a fight between the two perpetrators they were indicating (later identified as § 87(2)(b) and § 87(2)(b) and the victim (later identified as § 87(2)(b)). PO Dandrea described the two perpetrators as a black male, about 5'10" tall and 180 pounds, and a Hispanic male, whose physical description he did not recall further. PO Dandrea denied seeing any fighting between § 87(2)(b) and § 87(2)(b) at this time.

§ 87(2)(b) and § 87(2)(b) were about twenty-five to thirty feet away at the time the bystanders pointed them out to the officers. Based on the radio run and the bystanders' information, the officers stopped § 87(2)(b) and § 87(2)(b) at the southwest corner of West 23rd Street and Seventh Avenue. PO Dandrea indicated that other officers had arrived at the scene by this point, but he did not recall exactly when they arrived or who they were. The officers said, "Stop," and the two men complied. Although they were adamant that they did not do anything, they did not try to run away. The officers put § 87(2)(b) and § 87(2)(b) against the wall, searched them, and handcuffed them as they were standing against the wall. PO Dandrea searched and handcuffed § 87(2)(b). He did not recall who searched or handcuffed § 87(2)(b). The two men did not resist, and no force was used to handcuff them. PO Dandrea denied pushing § 87(2)(b) into the wall and denied seeing any other officer do this.

After the two men were handcuffed, they were instructed to sit down on the sidewalk. PO Dandrea did not see any officer at the scene kick § 87(2)(b)'s legs out from underneath him, causing him to fall to the ground. He did not see any officer at the scene use any further physical force against § 87(2)(b) or § 87(2)(b) and stated that he himself used no physical force against them. PO Dandrea did not hear § 87(2)(b) make any statements about being hurt or being in pain; § 87(2)(b) never requested medical attention. § 87(2)(b) was cursing during this time, saying "Fuck," and using other obscenities that PO Dandrea did not recall. PO Dandrea denied that he called § 87(2)(b) a "nigger" or that he used any other obscene or profane language. He never heard § 87(2)(b) complain of back pain.

After the two males had been arrested, the victim of the robbery approached the officers and identified himself. He pointed at the two perpetrators and said that they had robbed him. PO Dandrea did not hear the victim provide any further details. PO Dandrea estimated that he was at the scene for about fifteen minutes before he and PO Martinez transported § 87(2)(b) back to the 10th Precinct stationhouse.

At the stationhouse, § 87(2)(b) was very upset and was yelling. He was placed in the holding cell. After a certain amount of time, a supervisor at the 10th Precinct decided that the arrest would be voided. PO Dandrea did not know why § 87(2)(b)'s arrest was being voided and stated that he had no role in the investigation. § 87(2)(b) was told that he could leave, and at first he left but then came back and began yelling. PO Dandrea observed Lt. Lauterborn telling § 87(2)(b) to leave the stationhouse. PO Dandrea stated that Lt. Lauterborn was "polite and mild-mannered" but § 87(2)(b) was upset and continued to shout. PO Dandrea heard Lt. Lauterborn told § 87(2)(b) "If you don't leave, eventually you're gonna be back in here." § 87(2)(b) shouted, "Go ahead! Lock me back up!" Eventually, after repeated orders to leave, § 87(2)(b) left the stationhouse. PO Dandrea denied that Lt. Lauterborn made

any physical contact with § 87(2)(b) and denied seeing him pull § 87(2)(b)'s arm or push him outside of the stationhouse.

Lt. Theodore Lauterborn, 10th Precinct

Capt. Theodore Lauterborn is a § 87(2)(b)-old white male who has brown eyes and brown hair. He is 5'10" tall and weighs 230 pounds. At the time of this incident, he was ranked as a lieutenant and was assigned to the 10th Precinct. Since the date of this incident, he has been promoted to captain and transferred to the 81st Precinct. The investigation will refer to Lt. Lauterborn by his rank at the time of this incident. Lt. Lauterborn provided his memo book entries for June 6, 2008, but he had no entries regarding this incident [encl. 15a-b]. On January 12, 2009, Lt. Lauterborn was interviewed at the CCRB [encl. 16a-b].

On June 6, 2008, Lt. Lauterborn was working a 2200 x 0645 tour. He was dressed in uniform and assigned as the desk officer for the 10th Precinct. Lt. Lauterborn stated that he was not present for the arrests of § 87(2)(b) and § 87(2)(b) but he recalled interacting with § 87(2)(b) at the stationhouse following § 87(2)(b)'s arrest. Lt. Lauterborn was working as the desk officer when the two arrested individuals were brought in. § 87(2)(b) and § 87(2)(b) were searched and put into the holding cell while an investigation was conducted to determine the validity of the two arrests. Lt. Lauterborn stated that throughout the incident, § 87(2)(b) was very loud, and Lt. Lauterborn believed § 87(2)(b) to be intoxicated, as he had red eyes and was slurring his speech. Lt. Lauterborn believed that § 87(2)(b) was also intoxicated, as he was "barely standing," had red, watery eyes, and was falling asleep, but he stated that § 87(2)(b) "never said a word" while he was in custody. Lt. Lauterborn added that the victim who had accused § 87(2)(b) had also come into the stationhouse and was also intoxicated, to his recollection. § 87(2)(b) "made a scene" while he was lodged in the holding cell by complaining that he had not committed the crime, verbally abusing officers, and using obscene language.

During the follow-up investigation, the officers determined that the identification of § 87(2)(b) on the street had not been good, and they decided to release § 87(2)(b). Lt. Lauterborn did not recall exactly which officer made the determination that § 87(2)(b) should be released. He stated that he did not recall exactly how the officers had determined that the identification was not good, whether it was through video footage or other witness statements.

After § 87(2)(b) was released, he continued to be loud. He did not leave after he was told that he was free to go but remained inside the stationhouse for about forty-five minutes. During this time, § 87(2)(b) was "ranting and raving about being arrested." He was wandering near the civilian waiting area and approaching the desk where Lt. Lauterborn was working. Lt. Lauterborn stated that § 87(2)(b) wanted the names and shield numbers of the officers at the scene, and he personally wrote down the names and shield numbers of himself and of § 87(2)(b)'s arresting officer (PO Martinez) on a piece of paper and provided them to § 87(2)(b). As the stationhouse was busy at the time, with a number of civilians coming in to make reports, Lt. Lauterborn repeatedly asked § 87(2)(b) to discuss it outside the stationhouse, but § 87(2)(b) refused to leave and continue to raise his voice. Lt. Lauterborn could not estimate how many times he asked § 87(2)(b) to leave but stated that it was "quite a few."

Eventually, Lt. Lauterborn took § 87(2)(b) by the arm to lead him outside. § 87(2)(b) was moving his arm a little bit to try to remove Lt. Lauterborn's hand. Lt. Lauterborn spoke to § 87(2)(b) outside the stationhouse for a while. Lt. Lauterborn also stated that he saw § 87(2)(b) talking on the phone, but he did not know if he was speaking to IAB. Lt. Lauterborn then walked back inside the stationhouse. When he checked outside about fifteen minutes later, § 87(2)(b) was gone. Lt. Lauterborn denied pushing § 87(2)(b) in the chest and stated that his hands never made contact with § 87(2)(b)'s chest.

Sgt. Donald Houvener, 10th Precinct

Sgt. Donald Houvener is a § 87(2)(b)-old white male who has blond hair and blue eyes. He is 6'3" tall and weighs 230 pounds. Sgt. Houvener provided his memo book entries for this date, but he had no entries regarding this incident [encl. 17a-b]. On March 19, 2009, Sgt. Houvener was interviewed at the CCRB [encl. 18a-b].

On June 6, 2008, Sgt. Houvener was working a 2200 x 0644 tour. He was dressed in plainclothes and assigned as the anti-crime sergeant for the 10th Precinct. He was working with PO Riso and PO Lawrence, and the officers were assigned to an unmarked blue Chevy Impala with RMP #§ 87(2)(b).

Sgt. Houvener stated that at about 1:15 a.m. on June 6, 2008, a radio run was put out for a robbery at a bookstore on Eighth Avenue and West 21st Street in Manhattan. A male caller gave a description of a

Hispanic male and black male as the perpetrators. Sgt. Houvener, PO Riso and PO Lawrence were canvassing for the perpetrators in the area when an officer put out on the radio that the two perpetrators had been stopped at Seventh Avenue and West 23rd Street. Sgt. Houvener, PO Riso, and PO Lawrence responded to the location, where Sgt. Houvener observed several uniformed officers, two plainclothes officers, and Capt. Valuzzi, already at the scene. Sgt. Houvener stated that he did not recall any other specific officers at the scene aside from Capt. Valuzzi.

At the time Sgt. Houvener arrived at the scene, one black male (later identified as § 87(2)(b)) and one Hispanic male (later identified as § 87(2)(b)) were already in handcuffs and seated on the sidewalk next to the building. Sgt. Houvener parked his vehicle, and he, PO Riso and PO Lawrence approached. § 87(2)(b) was screaming that the officers were “racist” and that they stopped the “wrong guy.” Sgt. Houvener stated that he did not believe the complainant of the crime was at the scene; he believed that the complainant was at the bookstore with other officers. Capt. Valuzzi was telling § 87(2)(b) and § 87(2)(b) to “calm down,” but Sgt. Houvener did not recall Capt. Valuzzi having any other interaction with either § 87(2)(b) or § 87(2)(b). As Sgt. Houvener was listening to Capt. Valuzzi, he heard that the complainant of the crime had lost his wallet. Sgt. Houvener decided that he was going to go look for the wallet, and he, PO Riso and PO Lawrence began circling the block with their flashlights. However, they did not find the wallet, and eventually they resumed patrol.

Sgt. Houvener stated that he had absolutely no conversation with either of the two men who had been stopped, and he did not get within fifteen feet of them. He did not hear any officer call § 87(2)(b) a “nigger.” He did not see any officer use any force against § 87(2)(b) or § 87(2)(b). Sgt. Houvener stated that he did not recall seeing either § 87(2)(b) or § 87(2)(b) at the 10th precinct stationhouse later that evening. He never heard § 87(2)(b) make any statements that his back was in pain or that he wanted medical attention.

Additional Witness Officers

Although Sgt. Houvener confirmed that he, PO Riso, and PO Lawrence were at the scene, he stated that they arrived after § 87(2)(b) and § 87(2)(b) had been placed under arrest. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Sgt. Vincent Fontana of the 10th Precinct was also interviewed. However, Sgt. Fontana did not recall this incident, and his memo book contained no relevant entries [encl. 19a-c]. His interview transcription is enclosed [encl. 20a-b].

Police Department Documents

The SPRINT job prepared for the incident shows that at 1:01 a.m. on June 6, 2008, police operator #2304 received a call from an unidentified male reporting a robbery and an assault in progress at West 23rd Street near Eighth Avenue [encl. 22a-f]. The CD recording of the police radio communications was requested and the content transcribed as follows. The unidentified male caller stated that the two perpetrators were Hispanic males, one wearing a red shirt, and one wearing a grey shirt and jeans. The two Hispanic males had taken the victim’s wallet and were beating the male victim, but they did not appear to have any weapons. The male caller said that he was following the victim and the two perpetrators. He was unsure if the victim needed an ambulance. The male caller declined to leave his name or phone number.

At 1:04 a.m., the dispatcher put over a report of a robbery in progress at West 23rd and Eighth Avenue. The description was given as one male Hispanic wearing a red shirt, one male Hispanic wearing a grey shirt and grey shorts. The male complainant was in front of the hotel at the location. Weapons and injuries were listed as unknown. Patrol sector B responded first. The anti-crime sergeant stated that he was responding as well and then reported that the officers had a suspect stopped at West 23rd Street and Seventh Avenue. The sergeant requested if the perpetrator had a hat and glasses, but the 911 caller was no longer on the line to advise, and the dispatcher was unable to answer. Patrol sector E arrived at the scene. Two arrests were made at the corner of West 23rd Street and Seventh Avenue.

According to the roll call, PO Martinez and PO Dandrea were assigned to patrol sector B in RMP #2154 [encl. 24a-d]. Sgt. Houvener was assigned as the anti-crime sergeant and was working with PO Lawrence and PO Riso. Lt. Lauterborn was assigned as the desk officer.

The command log for the 10th Precinct shows that § 87(2)(b) was logged in as an arrest at 1:30 a.m. on June 6, 2008 [encl. 25a-l]. He was arrested at Eighth Avenue and West 23rd Street, and his physical and mental condition is listed as intoxicated. A note states that upon further investigation, the victim was unsure of the identification of § 87(2)(b) as the perpetrator. § 87(2)(b)'s arrest was voided and he was released at 2:45 a.m. Another command log entry is made at 3:40 a.m., which states that § 87(2)(b) upon being released due to a voided arrest, requested to make a complaint against all uniformed members of service involved in his arrest. The note states that as § 87(2)(b) was "clearly intoxicated and he received no injuries from the original event or from police interaction," he was given direction of CCRB forms and the phone number for the CCRB. PO Ibarra of IAB was notified.

The command log entry for the arrest of § 87(2)(b) is also made at 1:30 a.m. His physical condition is listed as intoxicated but otherwise apparently normal. § 87(2)(b) was transported to Manhattan Central Booking at 5:25 a.m.

The prisoner holding pen roster for the 10th Precinct shows that § 87(2)(b) was released at 2:45 a.m. [encl. 26a-b].

Status of Civil Suit

According to Bruce Gomez of the Law Department, no 50h hearing has been held in connection with the notice of claim filed by § 87(2)(b) Mr. Gomez stated that as of March 25, 2009, no 50h hearing has been scheduled.

Criminal History of § 87(2)(b)

There was no NYSID number listed on § 87(2)(b)'s arrest report for this incident, as the arrest was voided. A search of the BADS database found no previous arrests for § 87(2)(b).

Civilian CCRB History

This is § 87(2)(b)'s first CCRB complaint [encl. 3a].

NYPD CCRB History

In PO Robert Dandrea's three years of service to the NYPD, the CCRB has not substantiated any allegations of misconduct against him that resulted in the imposition of discipline [encl. 2a].

In Lt. Theodore Lauterborn's 18 years of service to the NYPD, the CCRB has not substantiated any allegations of misconduct against him that resulted in the imposition of discipline [encl. 2b].

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(b) alleged that the officer who handcuffed him was a white male, about 5'11" tall with an average build, dressed in uniform, and balding. He also stated that this officer rode in the marked patrol car with him and PO Martinez to the 10th Precinct stationhouse. § 87(2)(b) also alleged that this was the same officer who kicked his feet out from underneath him and said, "I'm not a nigger, you nigger." § 87(2)(g)

§ 87(2)(b) identified Lt. Lauterborn by name as the officer who pushed him out of the 10th Precinct stationhouse. Lt. Lauterborn denied pushing § 87(2)(b) but admitted that he was the primary officer speaking to § 87(2)(b) upon his release. § 87(2)(g)

Undisputed Facts

It is undisputed that PO Dandrea stopped § 87(2)(b) after receiving a radio run for a robbery in progress that provided a physical description of the two perpetrators as two Hispanic males, one in a red shirt and one in a grey shirt. It is undisputed that § 87(2)(b) did not resist being handcuffed, and that his arrest was voided shortly after he was transported to the 10th Precinct stationhouse.

Disputed Facts

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Assessment of Evidence

§ 87(2)(g) [REDACTED] In his CCRB interview, § 87(2)(b) [REDACTED] alleged that after PO Dandrea handcuffed him, the officer “kicked [his] feet out” from underneath him, causing him to fall to the sidewalk and land on his tailbone. § 87(2)(g) [REDACTED] he did not describe any other force used against him on the scene in his CCRB interview. However, in the phone call he placed to IAB shortly after being released from the stationhouse, § 87(2)(b) [REDACTED] alleged that he was thrown on the ground several times by several officers (something he did not allege in his CCRB interview) in addition to “having his feet kicked out from under him.” § 87(2)(b) [REDACTED] stated that he suffered pain from landing on his tailbone but had no further injuries. He declined the offer of an ambulance from the IAB officer he spoke with on the phone upon his release from the 10th Precinct stationhouse.

The officers interviewed each denied that they saw § 87(2)(b) [REDACTED] fall to the ground at any point and denied seeing an officer kick § 87(2)(b) [REDACTED]’s feet out from underneath him. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED] In his IAB call, § 87(2)(b) [REDACTED] stated that he was standing directly in front of the exterior of the 10th Precinct stationhouse and was pushed off the steps by an officer who was telling him to get away from the stationhouse. § 87(2)(g) [REDACTED] he instead stated that Lt. Lauterborn shoved him with both hands in the chest several times to push him through the first set of doors leading out of the precinct; he never mentioned being “pushed off the steps” during his CCRB interview.

Lt. Lauterborn denied that he ever pushed § 87(2)(b) [REDACTED] but he stated that he did take hold of him by the arm and walk with him outside of the stationhouse after § 87(2)(b) [REDACTED] repeatedly refused to leave on his own. This is what PO Martinez described as well, as she stated that Lt. Lauterborn took hold of § 87(2)(b) [REDACTED] by his upper arm to lead him out. PO Dandrea denied that he observed any physical contact between Lt. Lauterborn and § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Allegations Not Pleaded

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation A) Force: At West 23rd Street and Seventh Avenue in Manhattan, PO Robert Dandrea used physical force against § 87(2)(b)

PO Dandrea denied that he had kicked § 87(2)(b)'s feet out from underneath him after handcuffing § 87(2)(b). He denied seeing any other officer do this as well and stated that § 87(2)(b) did not fall as he had claimed. PO Martinez and Sgt. Houvener also stated that they did not see anything similar to what § 87(2)(b) described happen. § 87(2)(g)

Allegation B) Offensive Language: At West 23rd Street and Seventh Avenue in Manhattan, PO Robert Dandrea make remarks to § 87(2)(b) based on race.

§ 87(2)(b) stated that after he fell to the ground, he said, "Damn, nigga," to PO Dandrea, and he alleged that PO Dandrea said in response, "I'm not a nigger, you nigger." PO Dandrea denied making such a remark, and the other officers interviewed also denied hearing any officer at the scene use a racial slur. § 87(2)(g)

Allegation C) Force: At the 10th Precinct stationhouse in Manhattan, Lt. Theodore Lauterborn used physical force against § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: